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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

JOHN TRUJILLO,  
Plaintiff,

vs.

Cause No. 15-CV-00901 JB-WPL

RIO ARriba COUNTY ex rel.,  
RIO ARriba COUNTY SHERIFF'S  
DEPARTMENT, DEPUTY GILBERT ATENCIO,  
in his individual capacity, and  
LIEUTENANT MARVIN ARMIJO,  
in his individual capacity,  
Defendants.

ORAL DEPOSITION OF JOHN TRUJILLO

May 5, 2016

10:02 a.m.

Offices of Brennan & Sullivan, P.A.  
128 East De Vargas  
Santa Fe, New Mexico

PURSUANT TO THE NEW MEXICO RULES OF  
CIVIL PROCEDURE this deposition was:

TAKEN BY: MR. JAMES P. SULLIVAN, ESQUIRE  
ATTORNEY FOR THE DEFENDANTS

REPORTED BY: DIANNA M. ALVAREZ, NM CCR #141  
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1 hectic, I'm sorry.

2 A. I'm working on a project for the -- for a  
3 parade involving veterans for the Fourth of July parade  
4 in Eagle's Nest and Red River, and the Run For The Wall  
5 and the Memorial ceremonies in Angel Fire.

6 Q. What are your duties with respect to that?

7 A. Kind of the overall planning and scheduling of  
8 the events.

9 Q. Are you the director of it?

10 A. It's just a voluntary -- yeah, I have some  
11 folks that are helping me but not an official --  
12 nothing.

13 Q. Is this part of the Memorial Day Angel Fire  
14 motorcycle thing up there?

15 A. That is the intention,

16 Q. And they're still doing that every year?

17 A. The Run For The Wall and the Memorial, yes.

18 Q. Do you live in Angel Fire?

19 A. South of Angel Fire.

20 Q. Where is that?

21 A. What do you mean?

22 Q. Where south is it, a little town or what is it  
23 called?

24 A. No, I live out in the country, south, five  
25 miles south of town.

5

1 Q. How long have you lived there?

2 A. 40 years, 38, 40 years.

3 Q. I've looked at your answers to Interrogatories  
4 and various documents, I know a little bit about your  
5 background. You grew up in Santa Fe; is that right?

6 A. No, I graduated from high school here in Santa  
7 Fe, right around the corner at the old St. Mike's.

8 Q. Where did you grow up?

9 A. The earlier years I grew up in the Oklahoma  
10 Panhandle.

11 Q. Oklahoma Panhandle, okay. What town?

12 A. A little town called Texhoma.

13 Q. And then what brought you to Santa Fe?

14 A. To play football for St. Mike's, I guess.

15 Q. Did they get rid of their football programs in  
16 Oklahoma?

17 A. No, I just -- it was a very small school and I  
18 was approached about athletic scholarships.  
19 Consequently it was felt that a larger school would  
20 provide exposure for me that a small school in Oklahoma  
21 would not.

22 Q. Did you have family in Santa Fe?

23 A. Yes.

24 Q. Did you do four years at St. Mike's?

25 A. No.

6

1 Q. How many years?

2 A. Two.

3 Q. What position did you play?

4 A. I was a running back.

5 Q. Good. What year did you graduate high school?

6 A. '63.

7 Q. And then any college after high school or any  
8 vocational education?

9 A. Yes, college.

10 Q. Tell me about that, where did you go to  
11 college?

12 A. Well, undergrad. from New Mexico Highlands, a  
13 graduate at the University of Texas in San Antonio. And  
14 did graduate work at New Mexico Highlands also.

15 Q. So did you go to Highlands right after  
16 graduating high school in '63?

17 A. Yes.

18 Q. How many years did you complete at Highlands?

19 A. I got a degree there so I guess four years. I  
20 was in the military so you were saying four years but  
21 it's -- I think I got the degree in a four-year period  
22 but it had the military time period interruption.

23 Q. Okay. When did you join the military?

24 A. '66, December of '66.

25 Q. And that was the Army Reserve?

7

1 A. No, I was in the infantry, regular Army.

2 Q. Okay. I saw your DD 214 and I don't know what  
3 the abbreviations all mean but I saw U.S.A.R., so that  
4 suggested to me United States Army Reserve but, no?

5 A. Well, it's been so long. What happens is, as  
6 an infantry officer -- in other words, at that time  
7 typically young men had a six-year commitment. As an  
8 infantry officer you have a commitment until your 45th  
9 birthday. So once I went -- once I became a  
10 commissioned officer my obligation remained in effect.

11 Q. Okay. So you joined the Army in 1967?

12 A. I believe it was December of '66.

13 Q. And what rank did you join as?

14 A. Oh, well, I think I was -- I was initially as  
15 -- as a private and then went to officer school almost  
16 immediately. So became a second lieutenant and first  
17 lieutenant. My DD 214, I believe, says what -- my  
18 separation of service was a first lieutenant but my I.D.  
19 says captain. So I'm -- my -- my military I.D. which I  
20 still have is a -- as a captain so.

21 Q. Okay. I'll look at your DD 214, it's  
22 somewhere here.

23 MRS. TRUJILLO: Do you want to have a copy to  
24 look at?

25 A. No.

8



1 Q. (By Mr. Sullivan) So you were born in  
2 Clayton, New Mexico?  
3 A. Yes, sir.  
4 Q. And your DD 214 then states that you were in  
5 Vietnam as an infantry officer?  
6 A. I believe it should reflect that, yes, sir.  
7 Q. Okay. And that would have been as a first and  
8 then second lieutenant?  
9 A. As a second -- well, no. By the time I  
10 arrived in Vietnam I was a first lieutenant.  
11 Q. Oh, okay.  
12 A. So you're second lieutenant and then a first  
13 lieutenant. And then at the time of separation became a  
14 captain, so that it's all kind of simultaneous like that  
15 may reflect first lieutenant but --  
16 Q. Yes, that's what confuses me. I see on your  
17 DD 214 at the time of separation you were a --  
18 A. First lieutenant.  
19 Q. -- first lieutenant.  
20 A. Correct.  
21 Q. And then what's the next rank after that?  
22 A. Captain.  
23 Q. Why doesn't your DD 214 have you as a captain?  
24 A. I -- as I said, our time in -- in service as I  
25 was separated in -- I guess I was promoted, they tried

9

1 to keep me in the military initially and I think it's  
2 just kind of an automatic situation.  
3 Q. After you were discharged and I see an  
4 effective date of September 1969; does that sound right?  
5 A. That's -- of what, September of '69?  
6 Q. Yes.  
7 A. That would have been separation from active  
8 duty.  
9 Q. Did you continue on in the Reserve?  
10 A. Very briefly. I think -- I can't recall, a  
11 few months.  
12 Q. And then after maybe a brief time in the  
13 Reserve were you finished with the military?  
14 A. Yes. Except for my earlier answer that my  
15 commitment remained in effect.  
16 Q. You could be called up then, you mean; right?  
17 A. Yes.  
18 Q. But you were never called up again; right?  
19 A. That is correct.  
20 Q. Okay. I'm sorry, I'm not quite clear, but how  
21 do you explain that your DD 214 does not show the rank  
22 of captain?  
23 A. Well, that is, again, the form that existed on  
24 the date that I separated from active duty. And when  
25 I -- as I said, I was with the Reserve briefly, and when

10

1 I went back to inquire about my veteran's benefits they  
2 were carrying me as a captain.  
3 Q. Okay. And then I assume you completed your  
4 Bachelor's degree; correct?  
5 A. That is correct.  
6 Q. And then you said you also took classes or  
7 have a degree of some sort from the University of Texas  
8 San Antonio?  
9 A. I did 36 hours of graduate work, yes.  
10 Q. Did you get a degree of any type?  
11 A. I actually stopped -- well, stopped just short  
12 because they did not yet have their Doctoral Program in  
13 place so they asked us to not declare the Master's so  
14 that we could take classes while they waited to get the  
15 Doctoral Program approved. Then any classes at the --  
16 kind of all at the same time, I decided I was done with  
17 San Antonio and came back home to the mountains. And so  
18 at that time the 36 hours would have met the  
19 requirements for a Master's Degree, I just didn't  
20 declare it at the time. I was trying to -- I was going  
21 to apply for the Doctoral Program.  
22 Q. What area of study was that?  
23 A. My graduate studies then were in  
24 administration of higher education.  
25 Q. Okay. What is your college degree in?

11

1 A. Undergrad. was in Business, a Minor in  
2 Accounting.  
3 Q. Okay. Tell me about your occupational  
4 history. What's the last job you've held?  
5 A. I was working with Taos Public Schools.  
6 Q. In what capacity?  
7 A. I was an Assistant Principal.  
8 Q. When did you leave that position?  
9 A. 2001 or 2002, something like that.  
10 Q. What school was that where you were Assistant  
11 Principal?  
12 A. Taos High School.  
13 Q. How long were you at Taos High School?  
14 A. As an Assistant Principal, I believe I was  
15 there two or three years with them.  
16 Q. And did you retire out of Taos High School?  
17 A. No, I -- I'm -- I did not ever claim because  
18 each time I went to the -- or worked for the school  
19 rather than leaving my retirement in I withdrew it. And  
20 so I did not accumulate the total number of years. If I  
21 would left them then I should have claimed.  
22 Q. So you were born in 1945; is that right?  
23 A. Correct.  
24 Q. So if my math is correct, you left Taos High  
25 School when you were about 55 years old or so?

12

1 A. No.  
 2 Q. And, as I understand it, your kidney issues  
 3 are they the product or the result of your diabetic  
 4 condition or is there another cause that you're aware  
 5 of?  
 6 A. Well, the --- I guess it's a compounded issue.  
 7 Is it the diabetes, is it the Agent Orange? And some  
 8 people are able to have the diabetes and not have it  
 9 progress. In my case, of course, it progressed to the  
 10 point of what is termed kidney failure but ---  
 11 Q. When were you diagnosed with diabetes?  
 12 A. I believe I was age 45.  
 13 Q. Okay. And has any doctor told you that the  
 14 diabetes was a product or a function of being exposed to  
 15 Agent Orange?  
 16 A. Yes.  
 17 Q. Who was that?  
 18 A. The doctors with the V.A.  
 19 Q. Were you involved in any of the Agent Orange  
 20 litigation or lawsuits?  
 21 A. No, sir.  
 22 Q. Did you bring any claims?  
 23 A. No, sir.  
 24 Q. Why not?  
 25 A. Well, I guess at the time when all of the

17

1 original litigation and -- was going on, I was not aware  
 2 of the fact that I had the diabetes, was not aware of --  
 3 and so I was not aware of the --- the effects that it  
 4 would come to have on me. And so I just thought it did  
 5 not apply to me. And, of course, there was initially a  
 6 --- a litigation and then an initial settlement with him,  
 7 a number both at -- and the class action suit, if you  
 8 will. And then later the system was altered and began  
 9 to treat the rest of us.  
 10 Q. Okay. What did you do before going to work as  
 11 an Assistant Principal for Taos High School?  
 12 A. I was a real estate broker.  
 13 Q. Out of Angel Fire?  
 14 A. Yes.  
 15 Q. Did you have a company name?  
 16 A. Yes.  
 17 Q. What was that?  
 18 A. J. T. Realty.  
 19 Q. J. T. Realty?  
 20 A. Yes.  
 21 Q. How long did you work for J. T. Realty?  
 22 A. Well, I've had my license since 1978.  
 23 Q. Are you still practicing with J. T. Realty?  
 24 A. I haven't --- I continue to have the license in  
 25 affect because I'm grandfathered in, based on my age and

18

1 my number of years, but I am not required to do the  
 2 Continuing Ed. anymore, so I just keep the license.  
 3 And -- in case my kids need some help on something I can  
 4 help them. But I'm not actively participating, no.  
 5 Q. When was the last time you took a commission?  
 6 A. I'm trying to think. 12, 15 years ago.  
 7 Q. Okay. Other than working real estate from  
 8 1978 to being an Assistant Principal in Taos in 2000 or  
 9 so, did you work for any other schools?  
 10 A. I worked, yes, here for Santa Fe High. I  
 11 worked for De Vargas High School or De Vargas Junior  
 12 High.  
 13 Q. What did you do for Santa Fe High?  
 14 A. I was both the football coach and I taught  
 15 honors classes in government.  
 16 Q. What years were that?  
 17 A. I think I was there '95/'96 or '96/'97.  
 18 Q. Was it just one year?  
 19 A. I'm trying to think. I think I was with them  
 20 two years, if I recall. I'm not certain of that time.  
 21 Q. Okay, we'll just say approximately '95 to '97,  
 22 two years at Santa Fe High?  
 23 A. Correct.  
 24 Q. Were you the head football coach?  
 25 A. Pardon me?

19

1 Q. Were you the head football coach?  
 2 A. No, I was an assistant.  
 3 Q. Who was the head football coach?  
 4 A. The first year was Rick Romero, the second  
 5 year was Steve Baca.  
 6 Q. Were you on the faculty as well?  
 7 A. The years that I taught, yes.  
 8 Q. The years that you were a football coach at  
 9 Santa Fe High were you also on the faculty?  
 10 A. Yes. Now --- and I'm trying to think, I  
 11 believe one year I was actually teaching at De Vargas  
 12 and coaching at Santa Fe High so to ensure to make that  
 13 point clear.  
 14 Q. Okay. So that two-year period we talked  
 15 about, one year would have been teaching at De Vargas  
 16 High, another year would have been teaching at Santa Fe  
 17 High but you were assistant football coach through those  
 18 years; correct?  
 19 A. Correct.  
 20 Q. Any other teaching that you've done other than  
 21 De Vargas High, Santa Fe High and Taos High?  
 22 A. No.  
 23 Q. Any other administration, school  
 24 administration that you have accomplished other than  
 25 Assistant Principal at Taos High?

20



1 A. Yes, I've worked for New Mexico Highlands, and  
2 I worked for Santa Fe --- excuse me, San Antonio  
3 Community College in San Antonio.

4 Q. When did you work for New Mexico Highlands?

5 A. Oh, when I came back from the military in '69  
6 and '70.

7 Q. What did you do for New Mexico Highlands in  
8 '69 and '70?

9 A. I was the Assistant Director of Financial Aid  
10 for them.

11 Q. How long did you serve in that position?

12 A. I believe it was a little over a year.

13 Q. Okay. Any other school related employment?

14 You said ---

15 A. I was with a rather large junior college in  
16 San Antonio.

17 Q. What was the name of that?

18 A. San Antonio --- actually, it was San Antonio  
19 Union Junior College District.

20 Q. And when did you work for them?

21 A. I left here in '70 so I began in '70 and  
22 worked through '78.

23 Q. So you were there about eight years?

24 A. Correct.

25 Q. And what was your role at San Antonio, I'm

21

1 going to call it, Junior College?

2 A. Right. Oh, I initially went there as --- I  
3 initially went there as Assistant Director of Financial  
4 Aid and became Director of Financial Aid. Took over as  
5 a district level officer and dealt with federal programs  
6 and affirmative action for the College District.

7 Q. And why did you leave that position at San  
8 Antonio Junior College?

9 A. I just wanted to come back to the mountains.

10 Q. Any other reason why you left?

11 A. No, I just was ready to -- to come home.

12 Q. Okay. Any other work you've done in schools  
13 that we haven't discussed?

14 A. I -- one year I helped -- I'm trying to think.  
15 I don't believe I was teaching at all that year, I  
16 helped Coach Moon at Capital High School for one year.

17 I was helping them coach the freshmen. I can't remember  
18 if that was a volunteer position just to help them out,  
19 they needed the -- some help on the coaching staff.

20 Q. Did you have a teacher's certificate or a  
21 teacher's license?

22 A. Yes.

23 Q. When did you have that?

24 A. I had --- I guess from the time I was here to  
25 the time I was in Santa Fe and in Taos, each of the

22

1 years that I reported earlier.

2 Q. Okay.

3 A. Yeah.

4 Q. Has your teaching certificate or teaching  
5 license ever been suspended for any reason?

6 A. No.

7 Q. Other than this case, have you ever been  
8 arrested in your life by the police, other than the case  
9 we're talking about here?

10 A. No.

11 Q. You've never been arrested?

12 A. No.

13 Q. You've never been charged with a crime?

14 A. No.

15 Q. Okay. Have you been in any other lawsuits  
16 other than this lawsuit?

17 A. Yes, I was in one.

18 Q. Tell me about that.

19 A. I was struck by a dump truck. I'm thankful to  
20 be alive. I was struck by a State Highway Department  
21 dump truck as I was going along the road and --- so, yes,  
22 I was involved in a lawsuit there.

23 Q. Who was your attorney?

24 A. I believe on the Interrogatories I think I  
25 called him Max Sanchez but I believe it was Dan Sanchez.

23

1 You may know of --- he was an attorney here in town.

2 Q. The former Judge here in Santa Fe?

3 A. No, he -- well, did he become a Judge? He  
4 passed away a few years back.

5 Q. No, I'm thinking of somebody else.

6 A. But ---

7 Q. What were your injuries in that lawsuit?

8 A. Well, I had a pretty good contusion or  
9 abrasion here on the leg. And of course I had some back  
10 injuries that took a period of time to -- to deal with.

11 Q. When was that accident?

12 A. I want to say it was August of '85.

13 Q. Okay.

14 A. I believe it was August of '85.

15 Q. Other than your issues with your kidney that  
16 you talked about and diabetes which you talked about, do  
17 you have any other physical impairments?

18 A. Well, as a result of the diabetes, of course,  
19 excuse me, I have what is termed neuropathy. And, of  
20 course, it's been determined that all of those who  
21 served actually in Vietnam during that era, as a result  
22 of the Agent Orange, are subject to consequently  
23 suffering from neuropathy from the Agent Orange.

24 In addition, I guess I have issues -- well, a  
25 combination of issues. Both knees are pretty much shot

24

1 and I believe that was as a result of the -- the doctors  
2 suggested I have what is termed -- I was told that I had  
3 in excess of 250 air assault insertions. And what that  
4 means is that as you come in on a chopper if you can  
5 imagine for a moment that's the Osama Bin Laden  
6 take-down, that when you take -- begin taking fire you  
7 come out of the chopper and you jump, whether you're 10  
8 feet, 15, 20 feet, whatever, and so my knees are not in  
9 the best of conditions. They're pretty much shot.

10 But they will not do surgery on the knees  
11 because of the condition of my heart. I have one valve  
12 that is totally blocked and then -- but it -- they were  
13 going to attempt to put a stent in but it -- they  
14 learned that it had developed its own ulcer or  
15 alternative blood flow. And so they pulled out?

16 Q. How long have you had heart disease?

17 A. I think it was determined in conjunction with  
18 all the rest of the health issues. I was probably --  
19 since early 2000 it was diagnosed.

20 Q. Okay. And I saw somewhere that your knees  
21 were diagnosed as having degenerative arthritis?

22 A. Yes.

23 Q. Okay. Are you right- or left-handed?

24 A. Right.

25 Q. You're missing a part of your thumb there?

25

1 A. Yes, sir.

2 Q. How did that happen?

3 A. I developed a staff infection.

4 Q. When was that?

5 A. I believe -- let me think here. It must have  
6 been roughly '97 or '98. '94? Oh, excuse me, it was  
7 2004. I was trying to remember the years. It was 2004.  
8 What made me think about -- the reason -- I was thinking  
9 when I was in Laos and -- but it was in 2004 and 2005  
10 that I was in the hospital with -- I spent roughly 90  
11 days with -- with 15 surgeries on that hand, and in the  
12 end removed the thumb.

13 Q. Which hospital was that?

14 A. That was at the V. A.

15 Q. What was the cause of the staff infection, do  
16 you know?

17 A. They never were certain. I had at one  
18 point -- I think most of it had worked its way out,  
19 shrapnel in my body. And whether that was from working  
20 other -- well, there was some piece of shrapnel that  
21 caused an infection, they weren't certain.

22 Q. Where was the shrapnel in your body?

23 A. I had shrapnel throughout, in -- in my legs  
24 and my arm and my hands.

25 Q. Was the staff infection complicated by your

26

1 diabetes?

2 A. I don't believe so, no.

3 Q. Okay. What about children, do you have any  
4 children, Mr. Trujillo?

5 A. Yes.

6 Q. Can you give me their names and approximate  
7 ages.

8 A. Well, I have three stepchildren when I married  
9 my wife Linda here, sitting next to me.

10 Q. Okay.

11 A. The youngest is Cody Maschmeier, I think, and  
12 he's age 37.

13 Q. Okay.

14 A. He lives in Spokane, Washington. I have a  
15 daughter April White, she's 40, lives in Albuquerque. I  
16 have another daughter Dr. Emily Walker, she also lives  
17 in Albuquerque.

18 Q. Walker?

19 A. Doctor.

20 Q. Doctor?

21 A. She's a veterinarian. Oh, Walker is the last  
22 name.

23 Q. Emily Walker and she's a vet., you say?

24 A. She's a vet., yes, sir.

25 Q. Any other children?

27

1 A. And then I have a natural biological child  
2 from my first marriage.

3 Q. And what's that child's name?

4 A. Lisa Marie.

5 Q. Trujillo?

6 A. Trujillo. I -- I -- I have not been in  
7 contact with her so I don't know if she's married or,  
8 you know, not but she was Trujillo, yes.

9 Q. How old is she?

10 A. '68, so I guess roughly 48.

11 Q. And when was the last time you had contact  
12 with her?

13 A. She spoke to me last in roughly 1995 to '97,  
14 some time in there, '95, '96.

15 Q. I mean, were you present when she was a young  
16 child growing up?

17 A. No. I -- of course, right after she was born  
18 I, of course, went to Vietnam and tried to maintain a  
19 relationship with her but I didn't. Unfortunately it  
20 did not work as well as I would have hoped.

21 Q. As I understand it, you were in Vietnam for 10  
22 months; correct?

23 A. No, I was in Vietnam a year.

24 Q. Looking at the DD 214, it said like 10 months,  
25 26 days, so that doesn't make sense to you?

28



1 A. I think -- no, arrived in Vietnam -- I believe  
2 I arrived in Vietnam in September and I came home early  
3 September.

4 Q. Okay.

5 A. You may think that I arrived in September and  
6 came home early September.

7 Q. The reason why I'm asking is under foreign  
8 overseas service it says 10 months, 20 days here on your  
9 DD 214, not that it really matters. Okay. Any other  
10 children?

11 A. No.

12 Q. Are you on disability, SSI disability, Social  
13 Security disability?

14 A. I have Social Security disability, yes.

15 Q. When did you apply for Social Security  
16 disability?

17 A. When I received my veterans disability.

18 Q. And when was that?

19 A. Early 2000.

20 Q. Did you apply for disability after leaving  
21 Taos High School?

22 A. Yes.

23 Q. Any other health conditions that we haven't  
24 talked about? You have degenerative joint disease,  
25 arthritis in your knees you talked about, you have

29

1 diabetes, you talked about the kidney issues that we  
2 talked about, you have heart disease. Pretty  
3 impressive. Any other health issues?

4 A. Yeah, you know, it -- well, I think I've --  
5 where you mentioned, of course, with the diabetes is --  
6 the neuropathy is rather common and so I consider myself  
7 fortunate compared to what some people experience.

8 Q. Well, you're making me feel fortunate as I sit  
9 here. So let's talk about the day of this incident  
10 which is --

11 MS. HACSI: Mr. Trujillo, do you need a break  
12 to stretch a little bit?

13 Q. (By Mr. Sullivan) Do you want to take a  
14 break?

15 A. No, I just need to straighten out my legs  
16 here.

17 Q. Well, we've been going about an hour, do you  
18 want to take a five-minute break?

19 A. No, I'm fine. Do you want a break?

20 MS. HACSI: No, I'm sorry.

21 Q. (By Mr. Sullivan) Okay, let's talk about the  
22 day of the incident, August 22, 2013. I understand that  
23 you were driving back from a V. A. appointment; is that  
24 right?

25 A. That is correct.

30

1 Q. And were you alone the entire time, did you  
2 drive down that same day alone and drive back from Angel  
3 Fire?

4 A. Well, you said from Angel Fire. I drove from  
5 Angel Fire to Albuquerque alone, that is correct.

6 Q. Okay.

7 A. I drove from Albuquerque following the  
8 appointment back to Velarde to the point of the arrest  
9 alone. Following the arrest then I rode with my  
10 daughter, she took me on to Angel Fire.

11 Q. Okay. How long were you under arrest with the  
12 Sheriff's Department that day, how long did they hold  
13 you?

14 A. They kept me from -- and I don't recall the  
15 exact time of the arrest, it must have been 5:30 or  
16 6:00, and I think it was after midnight before they --  
17 they kept me in a cell handcuffed all of that time, yes.

18 Q. So you were held for six hours or so, would  
19 you say, more or less?

20 A. I believe that's right. It may have been  
21 seven, I think like at one time it was six and a half,  
22 seven hours.

23 Q. And as I understand it, on the way back from  
24 the V. A. you stopped in for dinner at El Paragua?

25 A. That's correct.

31

1 Q. Why El Paragua?

2 A. It's a nice little restaurant.

3 Q. Had you been there a number of times before?

4 A. Yes.

5 Q. Did you know the owners?

6 A. No.

7 Q. I think it used to be the Atencios used to own  
8 that, does that ring a bell?

9 A. No, I don't know.

10 Q. How often did you go there; once a year, was  
11 it a regular place or you tell me?

12 A. I would say that probably once a year would be  
13 a -- reasonable. If not, you know, maybe -- it would be  
14 hard to say, I guess. It probably would be two, three  
15 times a year.

16 Q. And you were aware that they served alcohol  
17 there when you drove up?

18 A. Yes.

19 Q. Had you had alcohol there before August of  
20 2013?

21 A. I don't recall ever -- one way or the other.

22 Q. Do you still drink alcohol?

23 A. Very limited.

24 Q. Tell me about that; once a year, once a week,  
25 you tell me?

32

1 A. Following the transplant my taste changed. A  
2 lot of foods and stuff that I drank or ate before tasted  
3 different.

4 Q. When was the last time you drank alcohol?

5 A. Probably in --- I had a drink last night but I  
6 don't have no ---

7 Q. What did you have last night?

8 A. I had a margarita.

9 Q. Tequila?

10 A. Yes.

11 Q. How many margaritas did you have?

12 A. It was two.

13 Q. How about the night before, did you have any  
14 alcohol the night before?

15 A. No.

16 Q. Was there a special occasion last night that  
17 you had two margaritas?

18 A. I was just tired and needed a --- rest up and  
19 hope for a good night sleep. And I had not slept well  
20 the night before and hoped that that would help relax me  
21 a little bit and help me sleep.

22 Q. Sure. This was in Santa Fe you had the  
23 margaritas?

24 A. Yes.

25 Q. Was it at a restaurant?

33

1 A. Yes.

2 Q. Which restaurant?

3 A. Double Tree.

4 Q. The what?

5 A. Double Tree.

6 Q. It was the bar restaurant at the hotel, the  
7 Double Tree?

8 A. Yes.

9 Q. It was at the hotel?

10 A. Yes.

11 Q. Was your wife with you?

12 A. Yes.

13 Q. Did she have anything to drink?

14 A. Yes.

15 Q. What did she have?

16 A. A Corona beer.

17 Q. Is it typical you might have a cocktail or two  
18 in the evening, is that typical for you?

19 A. No.

20 Q. What do your doctors say about drinking  
21 alcohol with your medical condition?

22 A. To not abuse it.

23 Q. Do they tell you to avoid it?

24 A. Not --- no, not as such.

25 Q. Are you still taking Diazepam on a daily

34

1 basis?

2 A. Yes.

3 Q. Did you take Diazepam this morning?

4 A. No.

5 Q. Did your doctors tell you that you have to be  
6 careful in taking Diazepam and drinking alcohol?

7 A. No.

8 Q. They've never discussed that?

9 A. No.

10 Q. So we're going back to El Paragua. You walked  
11 into El Paragua, did you sit in the bar or did you sit  
12 in the restaurant?

13 A. The --- the restaurant, as --- as I recall, I  
14 don't --- I don't recall where the bar is actually, but  
15 I'm assuming I was in the restaurant.

16 Q. Okay.

17 A. The dining area, as I recall.

18 Q. And about what time did you get to that  
19 restaurant that night?

20 A. I'm guessing it was five o'clock, thereabouts.

21 Q. Okay. And you ordered dinner?

22 A. Yes.

23 Q. What did you order for dinner?

24 A. I had a chicken enchilada dinner, if I recall  
25 correctly.

35

1 Q. Anything else?

2 A. In the way of food or ---

3 Q. Food.

4 A. No, I believe that was it.

5 Q. And you also, as I understand it, ordered a  
6 couple of Dos Equis; correct?

7 A. That is correct.

8 Q. Is Dos Equis the brand of beer you normally  
9 drink?

10 A. No. I drink --- or I guess through the years  
11 have sampled different beers, you know, not any one  
12 particular beer, no.

13 Q. Did you know any of the waiters that night?

14 A. No.

15 Q. Did you know anybody at the restaurant or bar?

16 A. No.

17 Q. Okay. Did you have the beers before dinner,  
18 during dinner, after dinner, or a combination?

19 A. I would guess that it was a combination.

20 Q. Did you have anything other than beer like a  
21 shot of Tequila or ---

22 A. No.

23 Q. --- anything like that?

24 A. Water perhaps but that would have been it.

25 Q. Would that be typical for you when you go to a

36



1 restaurant to order a couple of beers?

2 A. No.

3 Q. Why were you doing it that evening then if it  
4 wasn't typical?

5 A. Well, more typical is one beer. That evening  
6 the young busboy was very friendly and visiting and so  
7 I -- he asked me if I wanted a second beer as he was --  
8 and I finally allowed him to bring me a second beer. I  
9 have asked myself, I don't know that I even finished the  
10 second beer, to be honest with you.

11 Q. Were you done eating when you ordered the  
12 second beer?

13 A. I don't recall.

14 Q. Okay. And then you get in the car and you  
15 drive up toward Angel Fire and you were stopped around  
16 Velarde, right?

17 A. I stopped at a checkpoint.

18 Q. Okay, let's talk about that.

19 A. Okay.

20 Q. Had you ever been stopped at a checkpoint  
21 before?

22 A. Yes. I can't think of the years but probably  
23 some time in the '90s I recall stopping at a checkpoint,  
24 yes.

25 Q. At that time, in the '90s, when you were

37

1 stopped at the checkpoint, were you given an alcohol  
2 field sobriety test?

3 A. No, I was simply stopped. As is routine, the  
4 officer asked me if I had had anything to drink, I said,  
5 no, and I went on through.

6 Q. Okay. Before this evening on August 22nd,  
7 2013, had you ever gone through a field sobriety test in  
8 your life?

9 A. No.

10 Q. Where the officer took you out and maybe had  
11 you do the thing with the fingers to the nose or  
12 anything like that?

13 A. No.

14 Q. This was the first time?

15 A. Yes.

16 Q. And, as I understand it, when you were pulled  
17 over you had a mint in your mouth; correct?

18 A. That is correct.

19 Q. And why were you eating mints?

20 A. With the diabetes, I guess, similar to like a  
21 person who has a cavity your breath has an odor, an  
22 offensive odor. With the diabetes also develops a  
23 certain odor. And so I, out of habit, carry breath  
24 mints with me for the -- out of consideration for people  
25 that I don't offend them. And I have told my friends

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1 that if my breath is offensive to please tell me and I

2 will, you know, use a breath mint. And so that -- I

3 laugh because it's a -- the mouth becomes dry and it

4 becomes offensive. You may be able to smell it now.

5 Q. So you carry breath mints with you right now?

6 A. Yes, I carry them. It's just -- fortunately  
7 since the transplant my overall health is better and so  
8 it's not perhaps as offensive as it was before, it's not  
9 as big of an issue now as it was before.

10 Q. How long is the drive from Espanola, where El  
11 Paragua is, to your home in Angel Fire?

12 A. An hour and 30, 45 minutes.

13 Q. And you made that drive before, I take it?

14 A. Oh, many times.

15 Q. When did you place the breath mint in your  
16 mouth relative to being pulled over at the road block?

17 A. I placed it in my mouth as I was approaching  
18 the -- the first officer that I spoke -- or was  
19 approaching the -- the stop.

20 Q. And were you putting that mint in your mouth  
21 also maybe to mask the smell of the two beers?

22 A. No.

23 Q. It was purely because of the diabetes odor?

24 A. Yes.

25 Q. All right, well, let's go through this and

39

1 tell me what happened. So you had put a breath mint in  
2 your mouth when you saw the roadblock; right?

3 A. Correct.

4 Q. And why did you put a breath mint in as you  
5 approached the roadblock?

6 A. Well, so I can explain. One, I'm very  
7 conscious of my breath because of the health issues.  
8 And so I guess the first thing I did is I terminated the  
9 phone call which I was on the phone with a friend. The  
10 first thing I did was terminate the phone call. I was  
11 in my wife's MINI Cooper. I retracted the -- the  
12 convertible top, kind of the sunroof style as well, so  
13 that the officer could speak to me more easily without,  
14 you know, having to -- he was a rather tall officer, as  
15 I recall, and just to accommodate him.

16 At what point did I put the breath mint? I  
17 don't recall. Was it before I retracted or after? I  
18 don't recall. But I -- just out of common courtesy I  
19 normally use the breath mints if I'm going to be in  
20 close proximity with people.

21 Q. But based upon your other experience of facing  
22 a roadblock, where the officer simply said, "Have you  
23 been drinking?" You said, "No." And you said you're on  
24 your way, do you remember that?

25 A. Yes.

40



1 Q. Why would you need a breath mint just to tell  
2 the officer, "No," and you'd be on your way?

3 A. Well, the first time I was in a roadblock was  
4 years ago prior to being --- whether it was prior to  
5 being diagnosed or prior to being conscious of the  
6 breath odor from the kidney failure.

7 Q. So you took a breath mint and you opened up  
8 the convertible; correct?

9 A. That is correct.

10 Q. Before you had any conversation with the  
11 deputy?

12 A. Simultaneous.

13 Q. I'm not familiar with MINI Cooper's, how do  
14 you take down the convertible roof on a MINI Cooper?

15 A. Well, right here by the rearview mirror  
16 there's a button, there are two buttons, actually.  
17 There are two phase buttons. If you press it once it  
18 retracts it part way. Obviously it will not remove or  
19 take down the top totally, obviously, if you're moving.  
20 What I was doing was simply retracting so that as I  
21 approached him he could see me.

22 I didn't know were they looking for this Amber  
23 alert recently or whatever, they could have the  
24 opportunity to look in my car. You know, if they were  
25 looking for a person or whatever they might be looking

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1 for, that they could readily see in my car. And so I,  
2 out of courtesy to him, I --- as I said, terminated the  
3 phone call. Secondly, I retracted the top.

4 Q. That's what I'm going to ask you about,  
5 retracting the top. Is this a cloth top?

6 A. Yes.

7 Q. It's a cloth top and the whole thing will  
8 retract?

9 A. As I said, it's --- it's more of an accordion  
10 effect. The front half of the --- the front half will  
11 come back to about right here, top of my head.

12 Q. So it unfolds like an accordion?

13 A. It --- not unfolds, it collapses.

14 Q. Okay.

15 A. And then --- now, if you were in a stationary  
16 position and you pressed the button then the entire top  
17 would go back and become a convertible.

18 Q. All right. So you have to push a button to  
19 get it to retract and fold up a bit?

20 A. Yes.

21 Q. Anything else you have to do? Do you have  
22 clips or anything like that?

23 A. No.

24 Q. Just one button does it, huh?

25 A. One button.

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1 Q. Why not just roll down the window and talk to  
2 the officer instead of going through the taking the roof  
3 down?

4 A. As I said, out of courtesy to the officer.  
5 You already said you were not familiar with the MINI  
6 Cooper, they're not a very large car. And just so that  
7 he --- he wouldn't have to bend over as far to --- to  
8 speak to me.

9 Q. Okay. You weren't doing it because of your  
10 concern that you might have alcohol on your breath?

11 A. No.

12 Q. So tell me about the conversation with the  
13 officer as best you can remember, what was said and what  
14 was ---

15 A. He asked me if I had had anything to drink in  
16 the last few or several hours. And I was not going to  
17 lie to the officer and so I said, "Yes." And he said,  
18 "Okay," he said, "would you pull over to the side,  
19 please."

20 Q. Let's stop there. Was that all you remember?  
21 Did you tell him you had a beer or two beers? I mean, I  
22 need you to be as specific as you can recall and if you  
23 can't recall, that's fine.

24 A. Yeah, I --- I can't recall the specificity of  
25 the conversation that he asked me. And that was fine, I

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1 --- I appreciated that fact that I have no problem being  
2 further scrutinized because I had no --- no concerns.

3 Q. Okay, but other than you saying, "Yes," you  
4 had had alcohol, do you remember if you told the first  
5 officer if you had had a beer or a margarita or two  
6 beers? Do you remember anything other than simply  
7 saying, "I have had some alcohol in the last hour or  
8 so."

9 A. I think he asked and I think because --- which  
10 I --- I can't honestly remember if that conversation took  
11 place then or later with the second officer. As I said,  
12 it's more common that I would drink one beer, I think  
13 in this case I had ordered a second beer in visiting  
14 with the young man but, like I said, I --- I can't even  
15 say that I finished or drank the second beer.

16 Q. Well, I'm not concerned about what was drunk  
17 or what wasn't drunk right now, I want to focus on what  
18 you told the officers; okay?

19 A. Okay.

20 Q. So you told the officer you had something to  
21 drink?

22 A. Yes.

23 Q. Beyond that you can't remember; right?

24 A. It was rather brief at that point, he just  
25 asked me to pull out of the line and to the right. At

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1 which point I expected to be further scrutinized and  
 2 that was fine with me,  
 3 Q. And it was fine with you because you told him,  
 4 yes, you had something to drink?  
 5 A. Yes.  
 6 Q. So you expected to be separated and further  
 7 scrutinized; correct?  
 8 A. Yes.  
 9 Q. And all was good with you at that point?  
 10 A. Correct.  
 11 Q. Okay, then what happens next?  
 12 A. I pulled over as instructed, I guess I pulled  
 13 out of line, off to the side of the road. And whether  
 14 it was at that time that the second officer approached  
 15 me and asked, and I think I told him -- he asked if I  
 16 had had anything to drink, I said, "Yes." And I think,  
 17 as I said, out of habit I typically will drink, if I'm  
 18 going to be drinking and driving, one beer. I think in  
 19 this case I had the second, I think I may have told him  
 20 I had one or I had two beers.  
 21 Q. Okay.  
 22 A. Even though I had not -- I don't -- I don't  
 23 think I finished the second but that's immaterial, you  
 24 know. I didn't want there to be -- you know, try not to  
 25 lie to people. And so it's -- I said I had two beers

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1 and I drank them. So then he asked me to get out of the  
 2 car, which I did. Do you want me to continue?  
 3 Q. Sure.  
 4 A. I got out of the vehicle, I asked him if I  
 5 could retrieve my cane, I had this cane with me.  
 6 Q. The same cane you have today?  
 7 A. Yes. I have a number of them but this is my  
 8 favorite. I'm going to straighten out my knee. He  
 9 refused me the opportunity to retrieve my cane, he said,  
 10 "No, you don't need it." Okay.  
 11 Q. Where was your cane?  
 12 A. I was thinking that it was in the trunk of the  
 13 -- I was thinking that I had put it either in the trunk  
 14 of the car when I came out of El Paragua or it would  
 15 have been on the right-hand side, there on the right  
 16 seat. I typically set it on the right seat.  
 17 Q. As you sit here today, do you remember where  
 18 your cane was?  
 19 A. Not exactly, no.  
 20 Q. I'm looking at a document here which was an  
 21 Exhibit to your expert police officer's deposition. It  
 22 was Exhibit 1 to the Murray deposition, I'm going to  
 23 show it to you. This is a document that you wrote; is  
 24 that right?  
 25 A. What did you want me to look at here in

46

1 particular?  
 2 Q. Well, this is a document that you wrote,  
 3 correct, aside from the handwriting on the top?  
 4 A. Yes. Okay, it was in the trunk.  
 5 Q. Let's take it one step at a time, if you don't  
 6 mind, Mr. Trujillo.  
 7 A. Okay.  
 8 Q. This is a document that you wrote; correct?  
 9 A. That is correct.  
 10 Q. You wrote it on May 8, 2014, right, first  
 11 paragraph?  
 12 A. Okay, yes.  
 13 Q. And why did you write this document?  
 14 A. Simply I guess having dealt with contractual  
 15 agreements and legal issues I found that I always use  
 16 the term the shortest pencil is better than the longest  
 17 memory. And so I -- just out of habit it's a -- if  
 18 there's something that is a possible point of conflict I  
 19 want to have notes to that effect so that I can --  
 20 Q. Did you type up this Exhibit 1?  
 21 A. Yes.  
 22 Q. Did anybody help you write it?  
 23 A. No.  
 24 Q. And as I understand it, looking at Exhibit 1,  
 25 you state back in May of 2014 that the cane was in the

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1 trunk of your car; right?  
 2 A. I believe so, yes.  
 3 Q. So that's where it probably was; right?  
 4 A. Correct.  
 5 Q. Okay. So we're back to the scene, the second  
 6 officer asks if you had anything to drink, you said you  
 7 may have said two beers; correct?  
 8 A. Correct.  
 9 Q. The officer asked you to get out of the car  
 10 and as you were getting out of the car you asked if you  
 11 could use your cane?  
 12 A. Correct.  
 13 Q. Okay, tell me what else happened then.  
 14 A. He asked me to step away from the car. And I  
 15 anticipated the -- the field sobriety test. And I  
 16 attempted to explain to him -- I was anticipating the  
 17 field sobriety test, never experienced one but I have  
 18 seen them on TV which I knew was an impossible feat for  
 19 me. And so I asked him, I told him, I said, "Officer, I  
 20 won't be able to perform the field sobriety test for you  
 21 because I don't have that degree of balance because of  
 22 my impairment."  
 23 And he asked me to walk and I walked, I think,  
 24 from here to the end of the table or that chair and  
 25 back. And he said, "Oh, well, you can -- you can walk

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